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| APPLICATION NO.      | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------|-------------|----------------------|---------------------|------------------|
| 10/595,446           | 04/20/2006  | Ralph Zochert        | BINA.P004.US        | 9797             |
| 42389                | 7590        | 02/16/2010           | EXAMINER            |                  |
| DORT PATENT, P.C.    |             |                      | OLSON, LARS A       |                  |
| BOX 320069           |             |                      | ART UNIT            | PAPER NUMBER     |
| Alexandria, VA 22302 |             |                      | 3617                |                  |
|                      |             |                      | MAIL DATE           | DELIVERY MODE    |
|                      |             |                      | 02/16/2010          | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/595,446             | ZOCHERT, RALPH      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Lars A. Olson          | 3617                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 November 2009.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2 and 7-9 is/are rejected.
- 7) Claim(s) 3-6,10 and 11 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

1. An amendment was received from the applicant on November 9, 2009.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmichael (US 4,683,900) in view of Jaynes et al. (US 5,504,342).

Carmichael discloses a canopy for a boat, as shown in Figures 1-8, that is comprised of a tarpaulin cloth, defined as Part #20, which is supported by a tarpaulin frame having tubular frame members, defined as Parts #12 and 14, which are attachable to a boat, defined as Part #102, as shown in Figure 1. Said tarpaulin is further comprised of a pair of handles, defined as Parts #68 and 70, which are attached to forward and rearward ends of said tarpaulin, as shown in Figures 1 and 5.

Carmichael, as set forth above, discloses all of the features claimed except for the use of a handrail.

Jaynes et al. discloses a handrail for mounting on a rail of a boat, as shown in Figures 1-5, said handrail being comprised of a tubular handlebar, defined as Part #10, that is supported on either end by one of a pair of mounts, defined as Parts #18 and 18',

each with a fastening arm having a screw thread that can be inserted through and into a surface in order to fasten and secure said handrail to said surface, as shown in Figure 2.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to utilize a handrail for attachment to a rail of a boat, as taught by Jaynes et al., in place of the handle attached to the tarpaulin of the canopy for a boat as disclosed by Carmichael, in order to provide a boat canopy with a handle means that is stronger and better secured to a support frame for said canopy.

#### ***Allowable Subject Matter***

4. Claims 3-6, 10 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

5. Applicant's arguments filed on November 9, 2009 regarding claims 1, 2 and 7-9 have been fully considered but they are not persuasive.

6. The applicant argues that Carmichael (US 4,683,900) in combination with the teachings of Jaynes et al. (US 5,504,342) does not disclose all of the features of the handrail as disclosed by the applicant.

7. In response to the applicant's argument, Carmichael discloses a boat canopy having a tarpaulin cloth that is supported by a tubular frame, said frame being

attachable to a boat. Said tarpaulin further includes a pair of handles that are attached to forward and rearward ends of said tarpaulin. Since Carmichael does not disclose the use of a handrail as a handle means, the examiner has relied upon the teachings of Jaynes et al. to demonstrate that the use of a handrail with a pair of mounts for mounting on a rail of a boat is known in the art. Thus, one of ordinary skill in the art would readily recognize the use of a handrail as a handle means for a boat canopy in order to provide a stronger support for a person grasping a boat canopy. Therefore, for the reasons given above, the rejection of claims 1, 2 and 7-9 is deemed proper and is not withdrawn.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication from the examiner should be directed to Exr. Lars Olson whose telephone number is (571) 272-6685.

lo

February 5, 2010

/Lars A. Olson/

Primary Examiner, Art Unit 3617